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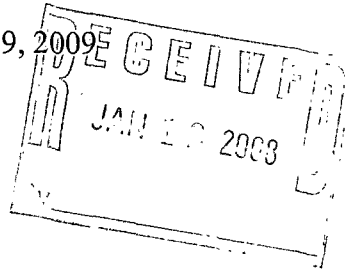
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January 9, 2009



COPY

***Via ExpressMail***

Mr. Thomas A. Mariani, Jr.  
Assistant Chief  
U. S. Department of Justice  
Environmental Enforcement Section  
P. O. Box 7611  
Washington, D.C. 20044-7611

Re: Gulfco Marine Maintenance Superfund Site, Freeport, Texas – Follow up  
Conference call with UAO Respondents, Rejection of their Settlement Approach,  
and Suggestion of Some Alternatives

Dear Mr. Mariani:

I have reviewed your letter of September 11, 2008 rejecting the approach to expedite the completion of the investigation, removal of tanks, and any necessary remediation at the Gulfco Marine Maintenance Superfund Site ("Site"). As you know, we represent The Dow Chemical Company on this matter. However, I am responding to your letter on behalf of The Dow Chemical Company, Chromalloy American Corporation, and LDL Coastal Limited, L.P., the three parties participating in the investigation of the Site ("Participating Parties"). Your letter reflects a misunderstanding or lack of information regarding the origin and scope of the approach. We think it is important that you have an accurate picture of what both EPA and the Participating Parties have been trying to accomplish.

First, you should be aware that the initial interest in combining the remaining investigative steps and any necessary remediation came from EPA Region 6, not the Participating Parties. However, the Participating Parties understand the benefits to be derived from expediting the review and analysis of data and moving to a remedy more quickly. The benefits are most significant with respect to the southern portion of the Site (segment south of Marlin Avenue) where the potential for redevelopment and a return to productive use of the property is highest and the remaining tasks are limited in number and scope. The Participating Parties and EPA's project manager have reached the same conclusion regarding the remaining tasks on the southern portion of the property. Assuming the data continue to support the conclusion that groundwater issues are limited to the area north of Marlin and do not impact the southern portion of the Site, the two remaining tasks are the removal of the tanks and the imposition of a restrictive covenant limiting the future use of the property to industrial or commercial uses. These can be accomplished very quickly. We have asked that EPA move forward with the process of delisting

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the southern portion once the agency confirms that all necessary response actions have been completed. This request is consistent with the applicable standard for delisting in the NCP. While completing the two remaining tasks on the southern portion is a necessary prerequisite to delisting, we have not conditioned our willingness to complete these tasks on EPA's agreement to follow its own delisting rules. We did ask for such a commitment if we accelerated the RI/FS schedule.

Secondly, the Participating Parties have repeatedly proposed the removal of the tankage on the Site. The first such offer was made in 2004 in one of our earliest meetings with the agency. EPA initially agreed and promised to prepare a draft Administrative Order on Consent characterizing the tank removal as an interim removal action. The agency then withdrew this proposal. The only explanation offered was the agency's desire to focus on the Remedial Investigation/Feasibility Study ("RI/FS") for the Site.

We have raised the issue on a number of occasions since that time. Most recently, we suggested that the tank removal be performed under the existing Unilateral Administrative Order ("UAO"). Similar work plans have been developed and approved pursuant to the UAO in the past. The parties are also ready to negotiate an AOC covering the tank removal, as they were in 2004. Prior to our phone call on August 15, EPA Region 6 had agreed to this approach in a call on June 10 which included the Superfund Branch Chief. Your letter appears to revoke that agreement as well.

Third, assuming the data confirm that the groundwater on the southern portion is not a concern, the investigative phase of the RI/FS on the southern portion is completed. The only conditions posing a risk on that portion of the Site are the tanks and their contents. As Hurricane Ike bore down on the Texas coast, we all held our breath. Fortunately, for the Site, the hurricane moved east from the original projected path. In 2005, the Site was spared by a similar last minute change in course by Hurricane Rita. While we still have the massive power of Ike clearly on our minds, once again, we urge EPA to consider our proposal to remove the tanks. The tanks and contents can be removed quickly without additional commitment of staff resources as a necessary adjunct to the UAO for Site security. We propose that we proceed with removal of the tanks and their contents in the same manner as we recently removed hurricane debris from the Site. EPA need only review and approve the work plan pursuant to paragraph 66 of the UAO. We should proceed with removal of the tanks and their contents as soon as possible. In fact, a work plan for the tank removal has been developed in concert with EPA and has already been reviewed and verbally approved by Gary Miller, EPA's project manager. While the Participating Parties remain willing to conduct the work under the AOC as previously agreed by EPA, that approach seems to involve unnecessary complexity when compared to proceeding on the basis of the UAO and an approved work plan.

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Fourth, your letter seems to suggest that we have asked the agency to act in a manner inconsistent with its regulations and guidance and delist all or a portion of the Site before the investigation is complete. This is not the case. EPA's guidance regarding partial delistings is quite clear. A copy is attached for your review. When the agency concludes that no further response action is necessary on a portion of the Site, it can proceed to propose the delisting of that portion. EPA is not required to develop a ROD for that decision and need not complete all elements of an RI/FS if the data from the investigation support the action. An action memorandum will suffice. We have simply suggested that EPA follow this guidance with respect to the southern portion of the Site and return it to productive use.

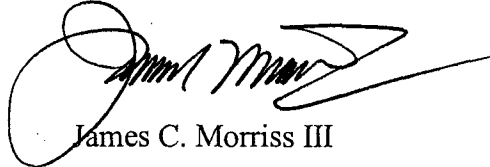
The Participating Parties had also suggested that the remaining investigative steps relating to the groundwater contamination on the northern portion of the Site be incorporated in a consent decree. These steps are currently covered by the UAO. The proposal was to replace the UAO with an agreement covering both the remaining investigative steps and any necessary remediation. The offer was made before the most recent well data from the deeper zone on the northern portion of the Site were available. We described the status of the on-going work during our phone conference. You have indicated that the agency has no interest in consolidating the remaining investigative steps with an agreement to perform the remedy. Accordingly, the Participating Parties will complete the investigation under the UAO. We have always been prepared to do so but had also tried to respond in good faith to EPA's earlier request that we accelerate the closure of the Site.

Finally, your letter contains a reference to public involvement in the decision regarding the future use of the Site. We understand the importance of keeping the public advised regarding developments at the Site, but the public's involvement in future land use decisions regarding private property is quite limited. The Site is zoned industrial (W-3—Waterfront Heavy, and M-2—Heavy Manufacturing). In addition, the owner of all but Lot 56 (located north of Marlin) together with the other Participating Parties have consistently maintained that the industrial/commercial classification is the most appropriate future use for the Site, given its past. Consistent with this plan, LDL Coastal Limited, L.P. and Ron Hudson/Jack Palmer (owners of Lot 56) are imposing restrictive covenants running with the land on the Site. The restrictive covenants limit the future use of the property to commercial/industrial and restrict the use of groundwater at the Site.

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Hopefully, this letter has served to clarify the misunderstandings evident in your letter of September 11. However, please do not hesitate to contact me if you have other questions. Please call me at 512-469-6130 so we can discuss the proposed UAO/Work Plan approach to the tank removal.

Very truly yours,



James C. Morris III

JCM/sag

Enclosures

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